

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

WILLIAM RANDALL MCKINNEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-13-337-HE
	)	
CITY OF OKLAHOMA CITY, CITY OF	)	
OKLAHOMA CITY POLICE DEPARTMENT,	)	
PHIL WILLIAMS, JEREMY ANGLIN, PAUL	)	
CAMACHO, CHRISTOPHER GULIKERS.	)	
	)	
Defendants.	)	

**OKLAHOMA CITY POLICE DEPARTMENT’S MOTION TO DISMISS**

COMES NOW a “Defendant,” the Oklahoma City Police Department, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby moves this Court to dismiss it from this action with prejudice as it is not an entity capable of being sued, and therefore the Petition fails to state a cause of action against it.

**BRIEF IN SUPPORT**

The Oklahoma City Police Department lacks the capacity to be sued. Rule 17(b) of the Federal Rules of Civil Procedure states:

CAPACITY TO SUE OR BE SUED. Capacity to sue or be sued is determined as follows:

- (1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;
- (2) for a corporation, by the law under which it was organized; and
- (3) for all other parties, by the law of the state where the court is located, except that:
  - (A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common

name to enforce a substantive right existing under the United States Constitution or laws; and

- (B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.

Title 12, § 2017(B) of the Oklahoma Statutes states that “any person, corporation, partnership, or unincorporated association shall have capacity to sue or be sued in this state.” Title 11, § 22-101 of the Oklahoma Statutes provides that “[a]ll incorporated municipalities shall be bodies corporate and politic, and shall have the powers to: 1.Sue and be sued; . . .”

Additionally, under state law, "municipality" is defined as "any incorporated city or town, and all institutions, agencies or instrumentalities of a municipality." 51 O.S. § 152(10). A “political subdivision” is defined as, “a municipality, . . .and all (its) institutions, instrumentalities or agencies.” 51 O.S § 152(11). An “agency” is defined as “any board, commission, committee, department or other instrumentality or entity designated to act in behalf of the state or a political subdivision.” 51 O.S. § 152(2). The Oklahoma City Police Department is an agency within the City of Oklahoma City and, pursuant to state law, is not a separate legal entity capable of being sued. Thus, under Rule 17(b) of the Federal Rules of Civil Procedure the Oklahoma City Police Department is not a proper defendant.

Lastly, the 10<sup>th</sup> Circuit Court of Appeals has recognized that police departments lack the capacity to be sued. *See Ketchum v. Albuquerque Police Department*, 958 F.2d 381, 1992 WL 51481, \*2 (10<sup>th</sup> Cir. Mar. 12, 1992) (unpublished op.) (“police

departments . . . are not suable entities under § 1983, because they lack legal identities apart from the municipality”); *Shangreaux v. Midwest City Police Department*, 936 F.2d 583, 1991 WL 104313, \*2 (10<sup>th</sup> Cir. June 12, 1991) (unpublished op.) (“The police department of Midwest City is not a suable entity”); *Martinez v. Winner*, 771 F.2d 424 (10<sup>th</sup> Cir.1985), *modified on other grounds*, 778 F.2d 553 (10<sup>th</sup> Cir. 1985), *vacated on other grounds*, *Tyus v. Martinez*, 475 U.S. 1138, 444 (1986) (“The ‘City of Denver Police Department’ is not a separate suable entity, and the Complaint will be dismissed as to it.”)

For the foregoing reasons, “Defendant” Oklahoma City Police Department respectfully requests that it be dismissed from this action with prejudice.

Respectfully Submitted,

Kenneth Jordan  
Municipal Counselor

/s/ Jennifer M. Warren  
Richard C. Smith, OBA #8397  
Jennifer M. Warren, OBA #30284  
Assistant Municipal Counselors  
200 N. Walker, Suite 400  
Oklahoma City, OK 73102  
(405) 297-2451 Fax: (405) 297-3851  
Attorneys for “Defendant” OCPD  
jennifer.warren@okc.gov

**CERTIFICATE OF SERVICE**

This is to certify that on the 8th day of April, 2013, a true and correct copy of the above and foregoing instrument was electronically transmitted to the Clerk of the Court using the ECF System for filing and mailed a copy via U.S. mail to: Don Jackson and Kristen L. Hartman, Jackson Law Firm, 217 N. Harvey, Suite 105, Oklahoma City, OK 73102, Attorneys for Plaintiff.

/s/ Jennifer M. Warren

Assistant Municipal Counselor